

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN SECTION OF TENNESSEE
WESTERN DIVISION

SCOTT TURNAGE , CORTEZ D.)
BROWN, DEONTAE TATE, JEREMY S.)
MELTON, ISSACCA POWELL, KEITH)
BURGESS, TRAVIS BOYD, TERRENCE)
DRAIN, and KIMBERLY ALLEN on)
behalf of themselves and all similarly)
situated persons,)

PLAINTIFFS,

V.

BILL OLDHAM, FLOYD BONNER, JR.,)
ROBERT MOORE, KIRK FIELDS,)
CHARLENE McGHEE, REGINALD)
HUBBARD, DEBRA HAMMONS,)
TIFFANY WARD, SHELBY COUNTY,)
TENNESSEE, TYLER TECHNOLOGIES,)
INC., GLOBAL TEL*LINK)
CORPORATION, SOFTWARE AG)
CLOUD AMERICAS, INC., and SIERRA-)
CEDAR, INC.,)

DEFENDANTS.

Case No. 2:16-cv-2907-SHM/tmp

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE CIVIL RIGHTS
ACT OF 1871, 42 U.S.C. § 1983,
TENNESSEE COMMON LAW,
DECLARATORY, AND INJUNCTIVE
RELIEF**

**JURY TRIAL DEMANDED
PURSUANT TO FED. R. CIV. PRO. 38(a)
& (b)**

**UNOPPOSED MOTION TO AMEND FOURTH AMENDED CLASS ACTION
COMPLAINT TO CORRECT MISNOMER AND MEMORANDUM OF LAW IN
SUPPORT THEREOF**

Plaintiffs Scott Turnage, Cortez D. Brown, Deontae Tate, Jeremy S. Melton, Issacca Powell, Keith Burgess, Travis Boyd, Terrence Drain, and Kimberly Allen, on behalf of themselves and all other similarly situated persons, by and through their designated attorneys, and pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure and Rule 7.2 of the Local Rules of United States District Court for the Western District of Tennessee, submit their

Unopposed Motion to Amend their Fourth Amended Class Action Complaint to Correct Misnomer (the “Motion”) and Memorandum of Law in Support Thereof. In support of the Motion, Plaintiffs state as follows:

1. This is a putative class action lawsuit against Shelby County, Tennessee, certain Shelby County policymakers, and technology contractors for, *inter alia*, the unlawful over-detention of numerous individuals in the Shelby County Jail caused by the development and implementation of a defective software package used to manage the Jail and the Shelby County Criminal Courts. Collectively, the defective software package is known as the Shelby County Integrated Criminal Justice System (“iCJIS”) and is comprised of software, such as the “Odyssey” software developed and implemented by Defendant Tyler Technologies, Inc., and various underlying subsystems.

2. On January 18, 2019, Plaintiffs, with leave of this Court, filed their Fourth Amended Class Action Complaint in order to name certain officials who took office under the newly seated 2018 Shelby County Administration along with certain technology contractors recently discovered by Plaintiffs to be involved in the development and implementation of iCJIS and to provide additional clarity to the declaratory and injunctive relief alleged in the Third Amended Class Action Complaint.

3. Since the filing of their Fourth Amended Complaint, Plaintiffs have been informed by the Shelby County Defendants, among others, that Plaintiffs, in naming the additional, recently-discovered technology contractors, should have named Software AG USA, Inc., not the related company Software AG Cloud Americas, Inc.

4. Accordingly, Plaintiffs, through this Motion, seek to amend their Fourth Amended Class Action Complaint in order to correct this misnomer by amending paragraphs 5 and 29 to

name Software AG USA, Inc. as a Defendant in the place of Software AG Cloud Americas, Inc. Plaintiffs have made no additional amendments to the Complaint.¹ Plaintiffs' proposed Fifth Amended Class Action Complaint is attached to this Motion as **EXHIBIT A**.

5. Rule 15(a) permits amendments to pleadings at any time during the litigation and leave shall be freely given "when justice so requires." *See* Fed. R. Civ. P. 15(a)(2). As a general proposition, "the Sixth Circuit frowns on the denial of this type of motion." *Smith v. First Century Bank*, No. 3:04-cv-591, 2006 U.S. Dist. LEXIS 51220, at *5 (E.D. Tenn. Jul. 25, 2006); *see also, Black v. Ryder/P.I.E. Nationwide, Inc.*, 930 F.2d 505, 509-10 (6th Cir.1991) (holding, *inter alia*, that district court should have allowed amendment, even though the case was four years old, even though plaintiff had already amended, even though the proposed amendment was two months before a non-jury trial, and even though the amendment would have converted the non-jury trial to a jury trial). However, a court must balance harm to the moving party if he or she is not permitted to amend against prejudice caused to the other party if leave to amend is granted. *Foman v. Davis*, 371 U.S. 178, 182 (1962). A court may deny leave to amend only in limited circumstances, such as "undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed and futility of the amendment." *Id.*

6. In the instant case, there has been no delay, bad faith, or dilatory motive by Plaintiffs, and the proposed amendments do not subject any party to prejudice. Plaintiffs merely seek to correct a misnomer that was inadvertently included in the Fourth Amended Class Action Complaint.

¹ Excluding, of course, changing references to the title of the Complaint to the "Fifth" Amended Class Action Complaint.

7. Upon the entry of an Order by this Court granting this Motion and permitting Plaintiffs to file their proposed Fifth Amended Class Action Complaint, Plaintiffs will promptly enter a stipulation of dismissal as to Software AG Cloud Americas, Inc.

8. The Defendants do not oppose the relief requested herein.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, on behalf of themselves and all other similarly situated persons, respectfully move this Honorable Court to grant this unopposed Motion in its entirety and provide Plaintiffs leave to file a Fifth Amended Class Action Complaint.

Respectfully submitted,

s/ Michael G. McLaren

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CERTIFICATE OF CONSULTATION

Pursuant to Local Rule 7.2(a)(1)(B), on February 22, 2019, counsel for Plaintiffs consulted by telephone with Douglas F. Halijan, counsel for Defendant Software AG Cloud Americas, Inc., and by electronic mail with Bradley E. Trammell, Odell Horton, Jr., R. Brandon Bundren, and Albert G. McLean, counsel for remaining Defendants. Defendants do not oppose the relief requested in the instant Motion.

s/ William E. Roult _____

CERTIFICATE OF SERVICE

I hereby certify that on this the 22nd day of February, 2019, a true and correct copy of the foregoing pleading has been filed electronically with the Court's Electronic Case Filing System. Pursuant to the Court's ECF System, the following parties listed below are filing users who will receive notice of the foregoing document's filing:

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